In the District Court of the United States for the District of New Jersey

CIVIL ACTION No. 3073

CITY OF JERSEY CITY, PLAINTIFF, AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, INTERVENOR, PLAINTIFF

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND HUDSON & MANHATTAN RAILROAD COMPANY, DEFENDANTS

OBJECTIONS OF INTERVENOR FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, TO APPEAL OF DEFENDANT HUDSON & MANHATTAN RAILROAD COMPANY, FROM ORDER GRANTING INTERLOCUTORY INJUNCTION, AND MOTION TO DISMISS SAID APPEAL

Pursuant to Rule 12, paragraph 3 of the Rules of the Supreme Court of the United States, the Intervenor Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, sets forth the following matters or grounds making against the jurisdiction of the Supreme Court as asserted by the defendant Hudson & Manhattan Railroad Company in its appeal from the order of the Court granting an interloctuory injunction herein.

The defendant's assignments of error may be summarized as follows:

1. That neither the plaintiff nor the intervenor has such interest in the subject matter as would sustain an application for interlocutory injunction.
2. That no irreparable damage will result to the plaintiff or the intervenor.
3. That irreparable damage will result to the defendant.
4. That neither plaintiff nor intervenor was required to give bond to protect the defendant as required by law and Rule 65 (c) of the Federal Rules of Civil Procedure.
5. That the Court's findings are for the most part irrelevant, and are wholly unsupported by any evidence before the Court.

Said contentions were argued at length before the 3-judge court, which had before it the entire record made before the Interstate Commerce Commission. It is submitted that none of said contentions is sound. Insofar as applicable to your intervenor, the record shows:

1. *Intervenor's interest.*—Your intervenor's interest is derived from the Emergency Price Control Act of 1942 as amended October 2, 1942 (56 Stat. 765) and orders thereunder. Under that statute it is the policy of government that prices, wages and salaries shall be stabilized during the war emergency at the level prevailing on September 15, 1942, with adjustments only as required to

fulfill wartime obligations or to correct gross inequities. Your intervenor is the agency designated to intervene before federal and state public utility commissions in order that the stabilization policy of the government shall receive due recognition and enforcement in the fixing of public utility rates and charges.

It is your intervenor's position that the Interstate Commerce Commission was under a legal duty to recognize and enforce in this proceeding the national policy and program of price stabilization and to deny any rate increase over and above the rates, fares and charges in effect on September 15, 1942, unless it clearly appeared that such increase was necessary after giving full and complete consideration to the improvement in the company's operations, revenues and income as a result of the war and the restrictions imposed on competitive forms of transportation; and that, in disregard thereof, said Commission failed and refused to give to your intervenor (although a party to the proceeding) a full and fair hearing, and granted a general rate increase, increasing the cost of living in direct violation of said legislation.

It seems to be defendant's contention that, even if the foregoing were true, your intervenor has no such interest in the subject matter as would entitle him to complain in a civil action. Such contention, it is submitted, is unsound.

2. *Irreparable damage to intervenor.* Section 1 (a) of the Emergency Price Control Act of

January 30, 1942 (P. L. 421, 77th Cong., 2nd Sess.) provides in part as follows:

> It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values. . . .

It seems obvious that a violation of the stabilization program threatens irreparable damage to the highest interests of government and to the welfare of all our people; and it is immaterial that the full extent of the damage which would result from

the violation of such legislation in this or any other case is not immediately measurable in dollars and cents.

3. *Irreparable damage to defendant.*—Defendant contends that the interlocutory injunction will result in irreparable damage to it. Such cannot be true if the challenged rate orders are improper.

The 8-cent downtown fare which the defendant is required to charge under the interlocutory injunction is the same fare which the defendant has had in effect since July 25, 1938; it is the same fare which the Supreme Court of the United States approved in 1941 as the highest fare which the defendant might properly charge under then-existing competitive conditions. Defendant seeks now to exact a 10-cent fare despite the fact that the record either shows or the plaintiff and the intervenor offered to prove that its traffic has enjoyed a phenomenal increase due to wartime conditions, that its corporate income at the present time exceeds the amount which it represented as necessary at the time it initiated this rate proceeding in June 1942, that the downtown line (as to which it seeks a fare increase) has always been and now is the most profitable of several distinct utility operations conducted by the defendant, that such downtown line independently considered is already earning a full and adequate return, and defendant's other utility operations have not been made to yield their fair share of the corporate income. In justification of its demand for increase in the downtown fare the defendant states

that its normal competitive ceiling of 8 cents is not operative during the war period, due to restrictions on automobiles, tires, rubber and gasoline and due to the accelerated demand for transportation. The express purpose of the Price Control or Stabilization Acts is to prevent price increases under such circumstances.

It seems obvious that the defendant, whose traffic has been growing from month to month, will suffer no irreparable damage due to the preservation by the court of the *status quo* pending final determination on the merits and that its private or profit interest is inferior to the national interest arising from the stabilization legislation enacted by Congress to aid in the winning of the war.

4. *Bond to protect defendant.*—Defendant does not insist that your intervenor is required to give bond as a condition precedent to the issuance of an interlocutory injunction. Your intervenor and other agencies of the Goverment are exempt from such requirement. (28 U. S. C. sec. 870; Federal Rules of Civil Procedure, Rule 65).

Since the interlocutory injunction was properly issuable at the request of your intervenor, it would seem to be immaterial that no bond was required of the plaintiff Jersey City—entirely apart from the fact that the Court decided that the plaintiff was not entitled to such exemption in its own right.

5. *Findings relevant and substantiated.*—The findings of the three-judge court are clear, orderly,

specific and relevant. The record was before the court, briefs were submitted, and the facts and issues were argued at great length.

The Court found that—

> The plaintiff and intervenor are proper parties to maintain this proceeding.—Findings (1) and (4).
>
> The Commission was under a legal duty to afford to plaintiff and intervenor, who were proper parties in the proceeding before the Commission, a full and fair hearing; and the Commission did not do so—having denied to said parties the opportunity to present evidence and testimony, including the right to cross-examine witnesses on material matters of a probative nature relevant to the issues.—Findings (2), (3), (4), (5).
>
> The national interest requires that the defendant's fares be maintained as currently in effect pending final hearing, and irreparable injury would result to plaintiff and intervenor in the absence of an interlocutory injunction.—Findings (6) and (7).

Findings (6), which relates to the effect of an increase in fares on the stabilization program, is not only sustained by the evidence, but also conforms to decisions of the Emergency Court of Appeals on the effects of price increases on inflation. See *Lincoln Savings Bank* v. *Brown,* decided May 5, 1943, OPA Service p. 610:17, *Philadelphia Coke Co.* v. *Bowles,* decided December 15, 1943, OPA Service p. 610:92, and *U. S. Gypsum Co.* v. *Brown* 137 F. (2d) 360.

All of the aforesaid findings are amply sustained by the record before the court. Both the Amended Complaint of the plaintiff City of Jersey City and your intervenor's Petition of Leave to Intervene contain explicit references to and excerpts from the Commission record, setting forth in detail the facts and matters at issue.

The matter falls within the well-established rule that an order of a three-judge court denying or granting an interlocutory injunction will not be disturbed on appeal unless plainly the result of an improvident exercise of judicial discretion.

United Fuel Gas Co. v. *Public Service Commission*, 278 U. S. 322;
Alabama v. *United States*, 279 U. S. 229;
National Fire Insurance Co. v. *Thompson*, 281 U. S. 331.

Wherefore, your intervenor moves:

1. That the appeal be dimissed.

2. That the order granting the interlocutory injunction be affirmed.

Respectfully submitted.

FRED M. VINSON,
Economic Stabilization Director,
By CHESTER BOWLES,
Price Administrator,
By RICHARD H. FIELD,
Acting General Counsel,
DAVID F. CAVERS,
Assistant General Counsel,
HARRY R. BOOTH,
Utilities Counsel,
Office of Price Administration Legal Department.

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